

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS**

**Call to Order:** By **CHAIRMAN MACK COLE**, on February 6, 2001 at 3:15 P.M., in Room 317-C Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Mack Cole, Chairman (R)  
Sen. Royal Johnson, Vice Chairman (R)  
Sen. Steve Doherty (D)  
Sen. Alvin Ellis Jr. (R)  
Sen. Mike Halligan (D)  
Sen. Bea McCarthy (D)  
Sen. Walter McNutt (R)  
Sen. Don Ryan (D)  
Sen. Corey Stapleton (R)  
Sen. Mike Taylor (R)  
Sen. Tom Zook (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Todd Everts, Legislative Branch  
Misti Pilster, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 131, 2/2/2001; SB 360,  
2/2/2001; SB 398, 2/3/2001  
Executive Action: SB 398

#### **HEARING ON SB 131**

**Sponsor:** SENATOR MIKE TAYLOR, SD 37, Proctor

**Proponents:** Governor Judy Martz  
President Tom Beck, SD 28

**Barbara Ranf, Department of Administration**  
**Senator Greg Jergeson, SD 46**  
**Chuck Evilsizer, Ronan Telephone**  
**Dick Crofts, Commissioner of Higher Education**

**Opponents:** None

**Opening Statement by Sponsor:**

**Senator Mike Taylor, SD 37, Proctor,** stated this legislation would revise statutes required regarding information technology (IT) in state government, especially as it relates to improving planning, greater accountability, and a greater oversight role for the Governor's office, the Budget Office, and the Legislature. In short, this bill brings accountability of IT to state government. The IT budget for state government is over \$164 million this biennium. The state needs to do a better job of using and managing IT. When government works better, its citizens are better served and this bill should bring a smarter, more efficient electronic government to the people of Montana. There are five key elements to the bill. First, it creates a chief information officer (CIO) for state government. Second, it creates a new board which will replace the past IT board with a more efficient, streamlined membership, including legislators. Third, it requires each agency's IT planning to be over-sighted by the CIO and OBPP. Next, it requires oversight by the interim finance committee. Finally, it updates and consolidates existing IT statutes.

**Proponents' Testimony:**

**Governor Judy Martz,** submitted written testimony,  
**EXHIBIT (ens30a01).**

**President Tom Beck, SD 28,** submitted written testimony,  
**EXHIBIT (ens30a02).**

**Barbara Ranf, Department of Administration,** discussed the gray bill that had been made with the amendments. She voiced her support of the legislation and said that SB 131 improves the planning, deployment, and enforcement processes to help maximize the benefits that are derived from IT investments. The guiding principles in the bill provide for proper statewide policy and standards, entering of data once, sharing of that data among agencies when feasible, coordination of systems to avoid duplication, development of public and private partnerships when cost effective, and coordination of systems with federal and local government partners. In addition, building systems to accommodate electronic transmissions between the state,

businesses, and citizens. She discussed and submitted a description of the proposed amendments and various sections, **EXHIBIT (ens30a03)**.

**Senator Greg Jergeson, SD 46**, noted that the introduced bill reflects the recommendations that came out of the interim committee that, as a matter of governmental organization, suggested that the CIO be the head of a new department of state government. That individual would help build the policy necessary over time which is related to IT and how it is incorporated and integrated among all the other departments. For the interim committee, there were basically three options: create a new department of IT headed by the CIO, create an office within the Governor's office, or have the CIO basically be a division administrator within an existing department.

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**Chuck Evilsizer, Ronan Telephone**, supported the legislation and the amendments.

**Dick Crofts, Commissioner of Higher Education**, voiced support of the bill as it is an effort to streamline and modernize the language of the statute that addresses IT issues for the state and underlines the importance of IT. It is important that more focus, planning, and coordination be devoted to IT. He noted amendments that would retain the kind of exemption for the university system and the Office of Public Instruction (OPI) that has been in statute for many years. They believe the university system has different needs and requirements for IT.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

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**SENATOR MIKE HALLIGAN** asked if this bill was to be used to hire a computer guru who anyone could call up to fix their computer problems. **Barbara Ranf** stated that was incorrect. The CIO is the person responsible for policy development and coordination among agencies. **SENATOR HALLIGAN** wondered what the rationale was behind excluding certain elected officials. **Ms. Ranf** noted that those exemptions are in existing statutory language. **SENATOR HALLIGAN** was curious if the CIO would be able to bring those elected officials into policy recommendations or if they would be exempt. **Ms. Ranf** professed that the cooperation among agencies also applies to the legislative and judicial branches. All the different entities are coordinated through the planning process.

**SENATOR HALLIGAN** wanted clarification that when the mainframe goes down, it isn't necessarily the CIO's job to fix a problem like that. **Tony Herbert, Department of Administration**, replied that the bill doesn't exempt anyone from this agency, but in the exemption chapter section 10, OPI and the university system are the only two offices that are truly exempted. It doesn't speak to fact that the judiciary and legislative branches are not bound to this area due to constitutional reasons. **SENATOR HALLIGAN** cited that policy issues might vary from Fish and Game to Motor Vehicle permits and wanted to make sure those were the types of policy issues that were being discussed. **Mr. Herbert** answered that the policy section in the bill really sets the stage for a better coordinated environment among all agencies.

**SENATOR STEVE DOHERTY** questioned what had been done during the past few years and how much money had been spent. **SENATOR TAYLOR** responded that there was a request to develop a budget and separate the budget out of the agency's other requests so the subcommittee could analyze what the information was.

**SENATOR DOHERTY** mentioned that several people from India had been contracted to fix computers. He wondered if they fixed them and whether this bill would help, hurt, or prevent that from happening again. **Mr. Herbert** explained that the Department of Revenue's point system did have a contract with an India-based firm and has helped them develop that system.

**SENATOR DOHERTY** inquired what was learned, whether it worked, and whether this bill would prevent that mistake from happening again, if indeed there was a mistake. **SENATOR TAYLOR** believed that the bill will fix it, as long as the authority remains for the agency to make those decisions. **SENATOR DOHERTY** desired to know the difference between current law and lack of management over what had happened previously. **SENATOR TAYLOR** couldn't speak for the agency, but professed that the current bill gives them the power to make decisions within their agency and what other agencies do with their IT. This is also an exempt position and there will be mistakes made, but this is the direction that needs to be taken. **SENATOR DOHERTY** inferred why the sponsor didn't sign the fiscal note. **SENATOR TAYLOR** maintained that the fiscal note was done before the bill was amended.

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**SENATOR BEA MCCARTHY** asked if the general idea was that when the legislature returns for the next session, it won't be necessary to go from department to department with huge computer costs when redoing the budget. **Mr. Herbert** replied that the planning effort prescribed here will bring back, in two years, an improved

understanding of the investments being made in IT. **SENATOR MCCARTHY** noted that during the last two legislatures, \$35 million has been put into two programs in the Department of Revenue. That's a lot of money in a state that's having a shortfall. She didn't want to put another \$18 million there this session. **Mr. Herbert** wasn't sure that the bill had the direct appropriations authority that **SENATOR MCCARTHY** was speaking to. However, his agency would create a state-wide strategic plan and the other agencies would then create individual IT plans, and any budget requests brought forward must fit into that plan. **SENATOR MCCARTHY** questioned whether it was necessary to amend the bill with a dollar figure that would be reviewed. **Mr. Herbert** said that was something to consider. In the bill's current form, the new program would review all IT requests to make sure they fit and are coordinated.

**SENATOR COREY STAPLETON** was confused about page 23, section 32 and how that portion of the bill has strength. He wondered if the agency heads were accepted and exempted from certain policies, who would remain to abide. **Mr. Herbert** noted that was a reference to current law. All that section does is exempt the new position on page 24, the CIO, and deals specifically with a position. It says that position does not have to follow the classification system. It does not exempt other positions from the powers of the bill. Parts 1, 3, and 10 are existing law about how state employees are paid.

**SENATOR DOHERTY** replied that the people in those positions are called exempt employees because they don't have to fall under the classification of the state pay plan. They serve at the appointment of the Governor. The CIO would simply be an exempt employee not subject to the same restrictions of the state pay plan. The CIO would not have the same kind of protection that a state employee would have.

**SENATOR ROYAL JOHNSON** referred to page 7 of the bill and wanted to know why the CIO is reviewed and advised by the Department of Administration. **SENATOR TAYLOR** declared that the original bill had a separate agency created. **SENATOR JOHNSON** desired to know how the sponsor envisioned the advisory board that would be created. **SENATOR TAYLOR** affirmed that there are a few oversights in the bill. There will be an interim committee that meets monthly to give advice and agree to contracts. **SENATOR JOHNSON** wanted justification of the committee makeup with 17 staff members and two legislators. **SENATOR TAYLOR** cited that the staff members certainly need to have a say in the committee and the importance of the legislators when dealing with the budget. He felt comfortable with the current makeup in the bill.

**SENATOR JOHNSON** presumed that the exempt employee might be **Mr. Herbert** since he's the CIO and wondered how he envisioned the advisory council working. **Mr. Herbert** responded that the new advisory council will have a higher level of membership, be more focused on the state's policy issues, and will be working together every month to six weeks. In terms of what needs to be done, plans need to be developed as to what everyone wants and then have the budget requests filled to fit with the planning effort.

**SENATOR ALVIN ELLIS** recollected that the Department of Revenue came to the legislature with a proposal two sessions ago which involved buying new computers to consolidate all of the revenue data into one software program. He wanted to know what part of the program would have oversight. **Mr. Herbert** exclaimed that he wasn't certain of all the pitfalls that program has had. He thought that by the creation of this process, certain types of problems may be avoided. If planning that goes on between the agencies is improved, everyone will have a better opportunity for success. **SENATOR ELLIS** asked if the Department will try to establish some continuity between different agencies. **Mr. Herbert** declared that issues could be brought forward to a council during the interim. This group could also provide for bench-marking requirements of systems being developed so that all agencies have common measurement schemes.

**SENATOR TOM ZOOK** charged that under the legislation, the CIO and the advisory committee would be very familiar with the points program. **Mr. Herbert** agreed.

**Closing by Sponsor:**

**SENATOR TAYLOR** elaborated that this legislation gives the agencies authority to look at certain issues. He believed this was a start to connecting the "Digital Divide" for state government, creating less duplication and better working agreements between agencies, and controlling IT budgets better while streamlining government.

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**HEARING ON SB 398**

**Sponsor:** **SENATOR KEN MILLER, SD 11, Laurel**

**Proponents:** **Don Quander, Montana Large Customer Group**  
**Bob Boschee, Smurfit-Stone Container Corporation**  
**Don Serba, Pulp & Paper Resources**

**Gail Abercrombie, Montana Petroleum Assn.**  
**Don Allen, Western Environmental Trade Assn.**  
**Cary Hegreberg, Montana Wood Products**  
**Patrick Heffernan, Montana Logging Assn.**  
**Mike Collins, Montana Resource Providers Coalition**

**Opponents: Patrick Judge, Montana Environmental Information  
Center**  
**Debbie Smith, Natural Resource Defense Council**

**Opening Statement by Sponsor:**

**SENATOR KEN MILLER, SD 11, Laurel,** stated that SB 398 gives the user of power the ability to use temporary power, such as a diesel generator, while their application is being processed.

**Proponents' Testimony:**

**Don Quander, Montana Large Customer Group,** voiced his support of the legislation. Essentially, it allows operation of small power units (10 megawatts or less) on a temporary basis while the permitting goes forward for the usual air permits. These small power units must be used exclusively for generating electricity by or for a direct sale and delivery to a permitted facility. Absent this bill, small generating units with minimal environmental impact must sit idle for weeks or months if there are legal appeals. It is important to expedite the process of permitting this sort of generation while protecting the substance of the environmental protection that underlies the air permitting requirements. Under SB 390, the small units must comply with air quality standards at all times. The language of the bill was developed in cooperation with the Department of Environmental Quality's (DEQ) air quality staff to assure that the standards would be protected. He submitted written testimony from the Ash Grove Cement Company, **EXHIBIT(ens30a04)**.

**Bob Boschee, Smurfit-Stone Container Corporation,** submitted written testimony, **EXHIBIT(ens30a05), EXHIBIT(ens30a06)**.

**Don Serba, Pulp & Paper Resources,** expounded that since electrical, natural gas, and other fossil fuel usage are integral parts of industries and everyone's lives, his group is compelled to seek a balance and common sense solutions to ease the impact of the energy crisis. All alternatives available should be looked at to keep Montanans working and businesses operating. SB 398 streamlines the permitting process for temporary power generators needed to keep Montanans working.

**Gail Abercrombie, Montana Petroleum Assn.,** discussed two refineries in Billings and the importance of the bill. Temporary generation will help during peak periods of the year to generate electricity and lower costs.

**Don Allen, Western Environmental Trade Assn.,** urged the committee to pass the legislation.

**Cary Hegreberg, Montana Wood Products,** pointed out some implications which had not yet been brought before the committee. Smurfit-Stone Container (SSC) uses residual by-products from sawmills. Virtually every sawmill in Montana depends on SSC staying in continuous operation in order to sell their by-products. If SSC can no longer afford to operate due to high electric costs, there will be a situation where sawmills begin piling up residual wood chips. If there isn't a market for those chips, sawmills won't be in operation very long. The ripple effect of that plant going down for an indefinite period of time could permeate throughout the state, leading to hundreds of workers being unemployed.

**Patrick Heffernan, Montana Logging Assn.,** noted that it is extremely critical that SSC remain in operation as it is vital to his organization's membership. He urged favorable consideration from the committee.

**Mike Collins, Montana Resource Providers Coalition,** said the mining industry will suffer the same consequences previously mentioned if the bill doesn't pass.

**Opponents' Testimony:**

**Patrick Judge, Montana Environmental Information Center,** believed the source of the current high energy prices are the changes in the structure of the electric utility industry. Montana has a surplus of electrical energy that is produced. He didn't believe it was an appropriate response to relax environmental standards. This legislation does not prohibit the burning of wood or tires.

**Debbie Smith, Natural Resource Defense Council,** had a major concern with the bill. The generators could run up to two years without an air quality permit. There should be a guarantee in the bill that there will be no ambient air quality violations while the permit procedure is proceeding. Montana administers its state air quality law under the Federal Clean Air Act. This bill is currently vague and it may put Montana's authority to run the state delegated program in jeopardy.

**Informational Testimony:**



**Don Vidrine, Department of Environmental Quality (DEQ)**, was available for questions.

**Questions from Committee Members and Responses:**

**SENATOR STAPLETON** wondered how the sponsor would feel about an amendment that would address the issue of no ambient air quality violations during the permitting time. **SENATOR MILLER** called for someone from the DEQ to explain what they do while an application is in their hands. **David Clem, DEQ**, said that while the permits are being processed, they ensure that there would be no violations of the ambient standards by reviewing information to identify a level of comfort in megawatt threshold. If they are above ten megawatts, there would be a concern that a violation might exist. **SENATOR STAPLETON** asked whether there was a mechanism to deal with faulty systems. **Mr. Clem** noted that there is power to prohibit something from occurring that would violate ambient standards. The DEQ cannot allow anyone to operate any equipment that would violate the ambient standards.

**SENATOR ROYAL JOHNSON** wanted clarification on an earlier statement that the most recent long term contract was \$340 per megawatt. **Bob Boschee** noted that is correct. At this time, the quoted prices for February are in a range of \$340 to \$360. Those quotes extend for the entire year of 2001. A five year contract that would begin on March 1 of this year has been running from \$125 to \$135 per megawatt hour. A contract that would start January 1, 2002 has been running at approximately \$70 per megawatt hour for five to seven year contracts. If a person waited until July 2002, there are some contracts that have been offered for less than \$60 per megawatt hour. **SENATOR JOHNSON** inquired as to how many megawatts SCC used. **Mr. Boschee** replied that their total usage of power was about 50 to 60 megawatts. They produce about eight of that, so 52 to 58 megawatts are purchased. They currently have a five year contract for 25 megawatts that began in October 2000. It is priced at \$54.60 per megawatt. The remaining power is purchased on the open market. **SENATOR JOHNSON** questioned whether SCC operated 24 hours a day and used the same amount of electricity the entire time. **Mr. Boschee** answered that was correct. SCC operates 24 hours a day, 356 days of the year and in general, averages 50 to 53 megawatts during full operation.

**SENATOR DOHERTY** sought to know whether this bill would effect SCC. **Mr. Boschee** responded that his company applied for their permit on January 1 and are in the appeal period now, which will expire February 11. If there is an appeal, it would have to be heard by the Board of Environmental Review which only meets

quarterly. If there are no appeals, they would have a permit to begin operating this weekend.

**SENATOR DOHERTY** asked what the current process for obtaining a variance is. **Mr. Clem** proclaimed that the process for a variance is in Montana Code Annotated 75-2-212. The applicant would need to submit a variance application to the Board of Environmental Review. At the same time, a Montana Environmental Policy Act (MEPA) analysis must be completed and processed. The Board would then have a hearing. **SENATOR DOHERTY** challenged what a permitted facility was. **Mr. Clem** contended that a permitted facility is any facility in Montana that has been issued an air quality permit by the DEQ. It would clear up the language on page 3, line 27 if the bill stated that definition. **SENATOR DOHERTY** cited line 30 and asked how long it takes the DEQ to design the permit application. **Mr. Clem** went through a statutory time frame. The DEQ has 30 days to review an application once it is submitted to determine whether or not it is complete. If it is not complete, they can stop the process and request the needed information from the applicant. The applicant is also given a written deadline by which to respond. If the information is complete, the DEQ must make a decision by day 60. The final decision is not final until there is a 50-day appeal period. The upper limit of time is 75 days. **SENATOR DOHERTY** noted page 4, line 6 and wanted to know what deadline was being referenced. **Mr. Clem** purported that would be the deadline that the DEQ would specify in the incompleteness letter that would be sent out in the first 30 days. **SENATOR DOHERTY** pressed further as to why two years is the time length for an emergency situation. **Mr. Clem** elaborated that two years is the outer limit that is specified in the Federal Clean Air Act. Under certain provisions under that Act, a facility can get out of certain regulations if they are temporary, and that is set at two years. However, if needed, Montana could shorten that length of time. **SENATOR DOHERTY** implored how the DEQ knows whether a company is meeting all standards if there isn't a requirement that certifies they are meeting all standards. **Mr. Clem** declared that he needs to rely on the staff's and his own experience in issuing permits and dealing with various scenarios. They have done an extensive analysis in order to get ahead of the game and have a good idea of what situation and location would possibly violate the ambient standards. The ambient standard they are most concerned with is the Montana one hour NO<sub>x</sub> standard. That is set at 564 micrograms per cubic meter. **SENATOR DOHERTY** wondered if the DEQ had done modeling on sources as opposed to ambient standards. **Mr. Clem** didn't know that there would be any harm from including that in the bill.

**SENATOR TAYLOR** asked if the federal government would oversee a situation where a company wasn't meeting ambient standards. **Mr. Clem** professed that the Environmental Protection Agency (EPA) could come in, if they chose, and enforce against that company violating the standards. **SENATOR TAYLOR** inquired whether the EPA oversees some of the programs. **Mr. Clem** reported that the EPA does oversee the DEQ's entire program. They submit copies of every permit issued to the EPA. **SENATOR TAYLOR** challenged as to whether this bill would prevent the EPA from doing their job. **Mr. Clem** cited that it wouldn't.

**SENATOR TAYLOR** pressed the sponsor for his intent in the bill and if he felt comfortable with the bill in that it would not allow companies that provide their own generation to sell the excess generation. **SENATOR MILLER** notified the committee that was correct.

**SENATOR DOHERTY** questioned as to how the EPA would know if there was a violation of ambient standards. **Mr. Clem** narrated that they would have to perform their own analysis and demonstrate that there was a violation. As a practical matter, there is a possibility that a situation like that could happen, although it has not happened yet.

**SENATOR TAYLOR** alleged that something like that hasn't happened because nobody has violated the standards. **Mr. Clem** claimed that it hasn't happened because the DEQ issues permits that demonstrate compliance with ambient standards.

**Closing by Sponsor:**

**SENATOR MILLER** pointed out that 75 days isn't a worst case scenario. If there are appeals, things could go on for a couple years.

**HEARING ON SB 360**

**Sponsor:** **SENATOR MIGNON WATERMAN, SD 26, Helena**

**Proponents:** **Kryss Kuntz, Montana Telecommunications Access Prog.**  
**Ben Havdahl, Montana Telecommunications Access Prog.**  
**Jim Smith, Montana Speech-Language-Hearing Assn.**  
**Pat Ingalls, Highland Hearing Center**  
**Nan Lafave, Department of Public Health and Human**  
**Services**  
**Chuck Evilsizer, Ronan Telephone**

**Opponents:** None

**Opening Statement by Sponsor:**

**SENATOR MIGNON WATERMAN, SD 26, Helena,** stated that this bill came from a discussion that was had in the Human Service subcommittee of Finance and Claims. The bill adds "mobility impaired" to the definitions of services that the impact funds can be used for. Impact funds are the ten-cents-a-month fee on phone bills to provide services for hearing impaired people. The legislation also allows for the purchase of hearing screening equipment for hospitals to screen infants to determine whether they have a hearing impairment. The bill says that services are provided free to people below 250% of poverty, are not provided above 400% of poverty, and in between those levels a fee schedule can be established.

**Proponents' Testimony:**

**Kryss Kuntz, Montana Telecommunications Access Program,** submitted written testimony, **EXHIBIT(ens30a07)**.

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**Ben Havdahl, Montana Telecommunications Access Program,** submitted written testimony, **EXHIBIT(ens30a08)**.

**Jim Smith, Montana Speech-Language-Hearing Assn.,** noted that there are ample funds in special revenue accounts to provide for the suggested amendments. He submitted a fact sheet, **EXHIBIT(ens30a09)**.

**Pat Ingalls, Highland Hearing Center,** submitted written testimony, **EXHIBIT(ens30a10)**.

**Nan Lafave, Department of Public Health and Human Services,** informed the committee that the Montana Telecommunications Access committee is administratively attached to the Department of Public Health and Human Services (DPHHS). Their budget is submitted as part of the DPHHS director's office budget. This bill came to light because of some issues raised by Legislative Fiscal Division (LFD) staff. She supported the legislation.

**Chuck Evilsizer, Ronan Telephone,** urged a "do pass" recommendation from the committee.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SENATOR HALLIGAN** didn't understand the percentage differences. **SENATOR WATERMAN** cited poverty guideline handouts. Currently, authority is being delegated and essentially anyone under \$35,000 could receive the equipment at no charge, while they are not eligible above that level. She urged the committee not to choose 250% of poverty.

**SENATOR TAYLOR** stated that with current statistics, 98% of Montana citizens are eligible for the program. **SENATOR WATERMAN** believed that's how the program operates now. With the standards in the bill, there won't be much of a limit. On the other hand, the equipment is very expensive and there are plenty of funds available.

**SENATOR TAYLOR** noted that there is a balance of \$500,000 in the account and wanted to know what the annual budget is. **Kryss Kuntz** believed that they take in approximately \$500,000 a year in revenue. **SENATOR TAYLOR** wondered why there is such a large balance. **Ms. Kuntz** replied that on the acceptance of the program in 1989, costs for relay services, equipment, and people was unknown. Montana relay services still remains an unknown to date because it is a telephone service that is ever-changing. **SENATOR TAYLOR** asked how much money is allocated to administration. **Ms. Kuntz** didn't know.

**Closing by Sponsor:**

**SENATOR WATERMAN** was going to get more information for the committee on how much money is allocated to administration and the sliding fee scale.

**EXECUTIVE ACTION ON SB 398**

**Motion:** **SENATOR TAYLOR** moved that **SB 398 DO PASS**.

**SENATOR DOHERTY** had several amendments that he wanted put on the bill, as did **SENATOR TAYLOR**.

**SENATOR TAYLOR** withdrew his motion.

**SENATOR HALLIGAN** requested that representatives from the DEQ be in attendance when action is taken.

**ADJOURNMENT**

Adjournment: 6:00 P.M.

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SEN. MACK COLE, Chairman

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MISTI PILSTER, Secretary

MC/MP

**EXHIBIT (ens30aad)**